

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

AMEND TITLE 13, CALIFORNIA CODE OF REGULATIONS
DIVISION 2, CHAPTER 6.5, ARTICLE 1, SECTION 1200

AND

ADOPT DIVISION 2, CHAPTER 6.5, ARTICLE 6.5
SECTIONS 1235.1 THROUGH 1235.6

MOTOR CARRIER SAFETY CARRIER IDENTIFICATION NUMBERS (CHP-R-00-12)

The California Highway Patrol (CHP) proposes to adopt regulations in Title 13, California Code of Regulations relating to the assignment of carrier identification numbers to “motor carriers, motor carriers of property, and for-hire motor carriers of property.” Existing law in Vehicle Code (VC) Section 34507.5 requires each of these persons to obtain a carrier identification number from the Department using “forms furnished by the department,” and to update the information upon request from the Department. These proposed regulations would implement, interpret or make specific the requirements of that existing law.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Highway Patrol proposes to amend Article 1, Section 1200 and to add new Article 6.5, Carrier Identification Numbers, to Title 13, California Code of Regulations, Chapter 6.5, Motor Carrier Safety, pursuant to Vehicle Code (VC) Sections 34501 and 34507.5. The article will formalize departmental policy to assign CA numbers in the legal name of persons who are either motor carriers, as defined in Section 408 VC, or motor carriers of property or for-hire motor carriers of property, as defined in Section 34601 VC. Hereafter in this document, the term “motor carrier of property” should be construed to include “for-hire motor carrier of property,” and the term “carrier” to include motor carriers, motor carriers of property, and for-hire motor carriers of property. The Department proposes to maintain the distinction between a motor carrier and a motor carrier of property, as those terms are separately defined in the Vehicle Code, and to declare that persons who are motor carriers of property only, and are not motor carriers, shall be subject in this chapter of the regulations only to the new article set forth in this regulatory proposal.

Title 13, California Code of Regulations (13 CCR), Section 1200, Scope, sets forth the applicability of the chapter to farm labor vehicles and vehicles listed in Vehicle Code Section 34500 and 34500.1. This proposal would amend subdivision (b), Limited Application, to specify that persons who are motor carriers of property as defined in Vehicle Code Division 14.85, but who do not operate vehicles listed in Vehicle Code Section 34500, shall be subject only to

Article 6.5 of this chapter. Article 6.5, comprised of proposed Sections 1235.1 through 1235.6, is proposed as a new article in this notice.

Proposed Section 1235.1, Application for Carrier Identification Number, sets forth definitions of terms and establishes a shorter name, “CA number,” as a substitute for the statutory phrase “carrier identification number” referenced in 34507.5 VC. A CA number represents a record in an electronic record system operated by the CHP, each record of which contains information relating to the safety experiences of a person who is a motor carrier or motor carrier of property. The section defines the persons who are subject to the proposed article, identifies the specific form referenced in Section 34507.5 VC, specifies that there is no fee for the application or its processing, and informs the reader how to obtain it and how to submit it to the Department.

Proposed Section 1235.2, Motor Carrier Safety Records of the Department, identifies the safety records to which CA numbers relate as “carrier records,” meaning records that contain general identification and contact information about persons who are motor carriers or motor carriers of property. It also explains “terminal records,” meaning records associated with specific business locations, or “terminals,” of motor carriers, containing information about those locations in California from which vehicles listed in Vehicle Code Section 34500 are operated by motor carriers. The section also lists the items of information, associated specifically with terminals, that are collected in the automated system.

Proposed Section 1235.3, Required Information and Assignment of Identification Numbers, details the information required to establish the existence of a motor carrier or motor carrier of property, as those terms are separately defined in the Vehicle Code, and declares that “doing business as” (DBA) names, while recognized as legitimate alternative names of persons, do not constitute separate legal entities in themselves and are not entitled to CA numbers separately from their legal owners. The section details specific limitations on what will be accepted as a DBA name, generally being only names adopted in compliance with the Business and Professions Code, particularly with respect to “fictitious business name” filings with county recorders, or in the case of foreign corporations, DBA names on file with the Secretary of State.

In the case of state and local government agencies which are not commercial firms, provision is made to treat the first subordinate level of each agency as a DBA of the agency. Provision is also made for associations and other organizations which typically operate local chapters, branches, or congregations that are nearly autonomous, but are affiliated with a state or national central organization in a manner that links them through a common Federal Employer Identification Number. The proposal would treat these organizations as one carrier, with each local branch identified as a DBA of the carrier.

The section details how reorganizations of carriers will be treated with respect to the retention of an existing CA number or the issuance of a new one. All of the specifics of the proposal relate to the legal existence of a “person,” using that term to mean both natural persons (individuals) and artificial persons (corporations and other forms of business organization). The proposal would formally establish the CHP’s current policy of issuing one CA number to each person, regardless

of how closely related groups of persons may be. The section also addresses the matter of individuals who operate businesses as sole proprietors and who also are partners or officers in other organizations that have status as a legal entity.

Proposed Section 1235.4, Identification Numbers Nontransferable, specifies that any one legal entity will be issued only one CA number regardless of how many DBA names or business enterprises the entity may have or operate, and that the CA number represents the person in his, her, or its legal name, not specifically a DBA name of the person.

The section specifies that CA numbers are nontransferable except to correct errors on the part of the Department, and that the Department will deny issuance of a second or subsequent CA number to the same legal entity unless the original CA number and its associated record no longer exist in the Department's record system. It further specifies that CA numbers are never reassigned to new persons. It declares that the Department may deny assignment of a new CA number to any person against whom the Department, the Public Utilities Commission, or the Department of Motor Vehicles has an unresolved action.

The section states that true name changes will be recorded in the record of a person who holds a CA number upon submission of satisfactory evidence that the change is in name only, and not the result of the formation of a new legal entity. The section also describes how the Department will handle the records of persons who are no longer active as motor carriers or motor carriers of property, including placing the records in inactive status and eventually deleting inactive records when they have remained inactive for a specified period of time.

The section also details how records will be combined and CA numbers will be retained or forfeited when companies merge with or are purchased by other companies. It also specifies how CA numbers will be retained and new numbers assigned when a single legal entity is divided into two or more legal entities.

Proposed Section 1235.5, Retention of Records by the Department, goes into more detail about how and for what reasons CA numbers and their associated records will be deleted from the Department's system, and under what circumstances the Department may retain records that might have been deleted absent those circumstances. The section also specifies that the Department will work with the Department of Motor Vehicles when deleting CA numbers to prevent the inadvertent invalidation of a Motor Carrier of Property permit by ensuring that all parties are aware of what record adjustments are necessary to prevent such occurrences.

Proposed Section 1235.6, Reconciliation of Records, describes the ongoing efforts of the Department to ensure all existing records in its system are brought into compliance with the requirements of the new Article. It specifies that when persons identified in the record system are found to have multiple CA numbers, or multiple persons are found to be "sharing" a single CA number, the Department will work with the involved entities to eliminate unnecessary CA numbers or to assign separate numbers as needed, and that the Department will allow adequate time to the involved entities to resolve the specific carrier identification issues as necessary. The section states that the Department will negotiate a date by which all corrective action on the part

of the persons who are subject to the Article will be accomplished, and give the person or persons a letter indicating that a time frame for establishing compliance is in progress, which the persons involved can show any peace officer if necessary. The section states the Department's enforcement philosophy with regard to the matters discussed in the new Article as one of tolerance toward persons who are making proper effort and progress in resolving any items of noncompliance in a reasonable time.

General

So that the Department may carry out its duties with respect to regulating the safe operation of trucks, trailers, buses and other vehicles specified in Sections 34500 and 34601 of the Vehicle Code, the Department has concluded that it is necessary to ensure that motor carriers and motor carriers of property are correctly evaluated as to their safety performance on California highways. To properly evaluate the performance of persons who are motor carriers or motor carriers of property, it is first necessary to properly identify each person who is a motor carrier or motor carrier of property.

Proper identification makes possible correct attribution of facts about each legal entity who is a motor carrier or motor carrier of property, and prevents data about one legal entity from being inadvertently associated with another in the Department's records. This in turn ensures that the Department will not take enforcement action against any person based on information that should be attributed to someone else, and will not overlook unsafe carriers due to having incorrectly attributed some of their poor performance to others. The Department has always made every effort to ensure such errors did not occur, but has never formalized a policy to establish such control. This regulatory action is intended to formalize an existing policy for that purpose.

The purpose of this regulatory action is to implement safety regulations to ensure that when the Department takes legal action against a motor carrier or motor carrier of property for safety violations, or other enforcement effort is exerted, the Department will accurately identify the correct subject of the action without inappropriately including other entities that are legally separate persons. It also enables the Department to correctly attribute favorable information to persons who are responsible for it, such as may occur with incentive programs intended to reinforce positive safety accomplishments.

PUBLIC COMMENTS

Any interested person may submit written comments on these proposed actions via facsimile to (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Commercial Vehicle Section
ATTN: Mr. Gary Ritz
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments must be received no later than 4:45 p.m., June 25, 2001.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by Enforcement Services Division no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The California Highway Patrol has available for public review an Initial Statement of Reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text in strikeout/underscore format. Requests to review or receive copies of this information should be directed to the California Highway Patrol at the foregoing address or by calling the California Highway Patrol, Commercial Vehicle Section, at (916) 445-1865. All requests for information must include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number, in case the requester's information is incomplete.

The rulemaking file is available for inspection at the California Highway Patrol, Commercial Vehicle Section, 444 North Third Street, Sacramento. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our web site.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Mr. Gary Ritz or Mr. Jack Schwendener, California Highway Patrol, Commercial Vehicle Section, at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should be directed to Mr. Gary Ritz.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the California Highway Patrol may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantial in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The California Highway Patrol has made an initial determination that the proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no non discretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing

businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The California Highway Patrol has determined that the proposed regulatory action may affect small businesses.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the California Highway Patrol must determine that no reasonable alternative considered by the California Highway Patrol, or that has otherwise been identified and brought to the attention of the California Highway Patrol, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Vehicle Code Sections 34500, 34500.1, 34501, 34501.12, 34505.1, 34505.6, 34505.7, 34507.5, 34507.6, 34508 and 34620.

REFERENCE

This action implements, interprets, or makes specific Vehicle Code Sections 34507.5, 34620 (a), 34621 (b)(4).

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

M. J. PADILLA, Chief

Enforcement Services Division